

Superintendent of Public Instruction, Disposition of Fees Collected by. Fees, of Superintendent of Public Instruction, Collection and Disposition of.

The superintendent of public instruction has authority to collect fees authorized by the state board of education. All fees, or other monies, collected by such officer, in his official capacity, should be paid into the state treasury and all expenses incurred by him for printing diplomas, etc., are claims to be presented to the state board of examiners.

Helena, Montana, March 18, 1910.

Hon. H. H. Pigott,
State Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of March 11, requesting an opinion upon

the following propositions:

"It seems to have been the custom of the State Superintendent of Public Instruction to collect fees for the issuance of diplomas issued under the authority of the state board of education, and to use such funds for expenses incident to the conduct of the office, such as postage, engrossing diplomas, et cetera.

"I wish to ask whether there is any authority for the collection of such fees, and if so, whether the superintendent of public instruction should use them as above stated, or should the same be deposited with the state treasurer, as other funds; and payment for such incidental expenses be made through the state treasurer's office, after approval of accounts by the state board of examiners, as is customary in the other state offices."

As to the authority for collecting fees for state or life diplomas, you are advised that under section 1, chapter 73, laws of 1909, the state board of education is given power to adopt rules and regulations, not inconsistent with law, for its own government, and proper and necessary for the execution of the powers and duties conferred upon it by law. The same section confers state diplomas and life diplomas. Therefore, in our opinion, it has the authority to adopt reasonable rules and regulations for carrying out this power and duty, and such rules and regulations may include a reasonable fee to cover the expenses and services of issuing state and life diplomas.

When such a rule has been regularly adopted by the state board, it has the effect of a law; and, therefore, fees collected under such rules and regulations are collected pursuant to law.

The state superintendent is ex-officio a member of the state board of education, and is the secretary of such board. (Section 654 and 657, revised codes.) If the state board of education makes it the duty of the state superintendent to collect the fees charged for issuing state and life diplomas, he is collecting them by virtue of his office of state superintendent, and, as stated above, such fees are fixed by and collected pursuant to law, or under regulations duly authorized by law.

Section 4, article VII., of the constitution, mentions the superintendent of public instruction, among other state officers therein named, and such section, among other things, provides that,

"No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees by law for the performance by any officer of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state."

Therefore, it is apparent that if the money received for the issuance of state and life diplomas is to be considered as fees, that it must be deposited with the state treasurer.

On the other hand, if the money so collected is to cover the expense of having such diplomas printed and made out to the various persons entitled to receive the same, then such expense would be covered by sections 440 and 441, revised codes.

Section 441 provides that:

"Each officer shall be required to make out and file with the state board of examiners, and itemized and verified account with proper vouchers thereto attached, of his expense and same shall be passed upon and allowed by such board before being paid."

It is apparent from the above laws that all monies received by a public official, in his official capacity, should be paid into the state treasury, and that all expenses incurred by him should be itemized in a claim to be presented to the state board of examiners, and, if allowed by the board, a warrant for the payment of such expenses drawn by the state auditor upon the state treasurer.

Very truly yours,

ALBERT J. GALEN,

Attorney General.